In The Supreme Court of the United States.

THE STATE OF MINNESOTA,

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior,

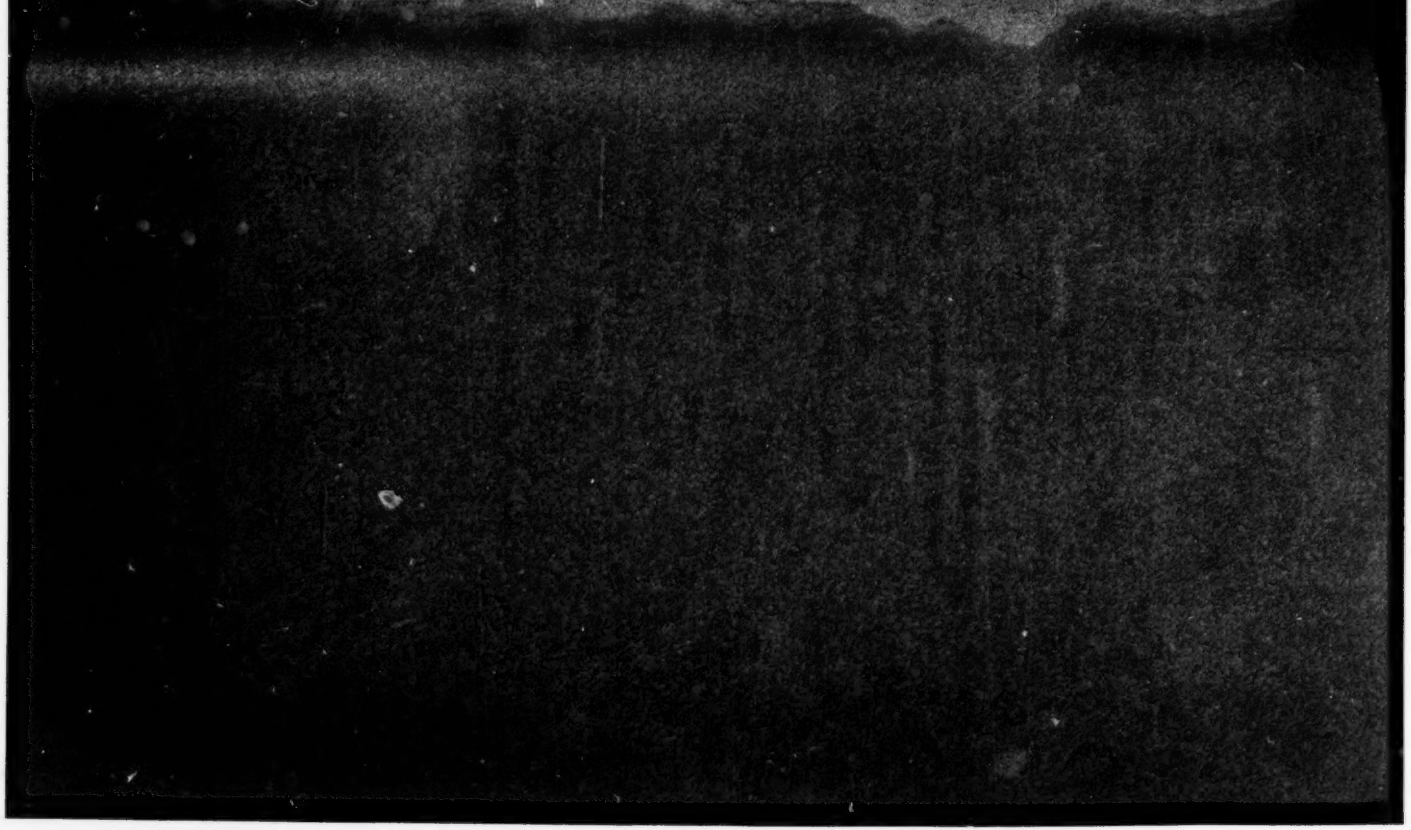
and

BINGER HERMANN, Commissioner of the General Land Office.

IN EQUITY.

Attorney General of the
State of Minnesota.

Solicitors and of Counsel for the Complainant.



In The Supreme Court Of The United States.

THE STATE OF MINNESOTA,

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior,

and

BINGER HERMANN, Commissioner of the General Land Office.

IN EQUITY.

To the judges of the Supreme Court of the United States of America:

Your oratrix, the State of Minnesota, complainant, by Wallace B. Douglas, Attorney General of said State, brings this bill of complaint against Ethan Allen Hitchcock, Secretary of the Interior, who is a citizen of the State of Missouri, and Binger Hermann, Commissioner of the General Land Office, who is a citizen of the State of Oregon, and thereupon your oratrix complains and says: That by the organic act of Minnesota, entitled, "An act to establish the Territorial Government of Minnesota," approved March 3, 1849, it was, among other things, enacted by Section 18 thereof

"that when the lands in said territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, the Sections numbered 16 and 36 of each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory and in the State and Territories hereafter to be erected out of the same."

That, by the act authorizing the State Government of Minnesota, approved February 26, 1857, it was, among other things, enacted by Section 5 thereof, "That the following propositions be, and the same are hereby, offered to the State Convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States and the said State of Minnesota, to-wit: First. That Sections numbered 16 and 36 in every township of public lands in said State, and where either of said Sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto and as contiguous as may be shall be granted to said State for the use of schools."

That the people of said Territory, proceeding under said act of Congress authorizing the formation of a State government, adopted, on the 13th day of October, 1857, a Constitution in which, by Section 3 of Article 2 thereof, the foregoing proposition as to school lands was duly accepted in the following language:

"The propositions contained in the act of Con- 7
gress entitled, 'An act to authorize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission into the Union on equal footing with the original States,' are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents."

That by an act of Congress entitled, "An act for 8
the admission of Minnesota into the Union," approved May 11, 1858, the said State was admitted into the Union on an equal footing with the original states in all respects whatever. That by said act of Congress it was, among other things, recited and enacted as follows:

"Whereas, an act of Congress was passed February twenty-sixth, eighteen hundred and fifty-seven, entitled 'An act to authorize the people of the Territory of Minnesota to form a constitution and state government preparatory to their admission into the Union on an equal footing with the original States'; and, whereas, the people of said 9
Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose; therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Minnesota

shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever."

That by a Joint Resolution approved March 3, 1857, entitled, "A Resolution relative to Sections sixteen and thirty-six, in the Territories of Minnesota, Kansas and Nebraska," it was enacted:

"That where any settlements, by the erection of a dwelling house or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas and Nebraska, and in the States and Territories hereafter to be erected out of the same) before the said sections shall have been or shall be surveyed; or when such sections have been or may be selected or occupied as town sites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four, or reserved for public uses before the survey, then other lands shall be selected by the proper authorities, in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled, 'An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.' And if such settler can bring himself, or herself, within the provisions of the act of fourth of September, eighteen hundred and forty-one, or the occupants of the town site be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes."

That by reason of the premises all sections num- 13
bered sixteen and thirty-six in every township of public lands in said State which had not been sold or otherwise disposed of prior to February 26, 1857, the date of the approval of the act of Congress authorizing the State government, were granted by the United States to, and inured to and became vested in, the State of Minnesota.

That, at the date of the admission of the State of Minnesota into the Union, the larger portion of the territory thereof, and including more than 20,000 square miles of the northwestern area of said State lying west of the Mississippi River, and 14
including the area and tracts here in controversy, were, and for a long time thereafter remained, unceded Indian lands, subject to the Indian title of occupancy.

That, by treaty between the United States and the Red Lake and Pembina bands of Chippewa Indians, concluded October 2, 1863, ratified by the Senate March 1, 1864, and proclaimed by the President of the United States May 5, 1864, the said bands of Indians thereby ceded, sold, and conveyed to the United States all their right, title and interest in and to all the lands then owned or claim- 15
ed by them in the State of Minnesota and in the Territory of Dakota, within the following described boundaries, to-wit:

"Beginning at the point where the international boundary between the United States and the British possessions intersects the shore of the Lake of the Woods; thence in a direct line southwestwardly to the head of Thief River; thence down the

main channel of said Thief River to its mouth on the Red Lake River; thence in a southeasterly direction, in a direct line towards the head of Wild Rice River, to the point where such line would intersect the northwestern boundary of a tract ceded to the United States by a treaty concluded at Washington on the twenty-second day of February, in the year eighteen hundred and fifty-five, with the Mississippi, Pillager, and Lake Winnebigoshish bands of Chippewa Indians; thence along the said boundary line of the said cession to the mouth of Wild Rice River; thence up the main channel of the Red River to the mouth of the Shayenne; thence up the main channel of the Shayenne River to Poplar Grove; thence in a direct line to the Place of Stumps, otherwise called Lake Chicot; thence in a direct line to the head of the main branch of Salt River; thence in a direct line due north to the point where such line would intersect the international boundary aforesaid; thence eastwardly along said boundary to the place of beginning."

That this cession did not include within the aforesaid boundaries a large tract of Indian territory in the said State of Minnesota which, for a long time thereafter, remained Indian country to which the Indian title had not been extinguished and which was subject to the Indian right of occupancy.

That the area of the tract not included in said cession was about 5,432 square miles and contained 3,494,482 acres of land, being 254½ townships more or less and containing more than 308½ sections numbered sixteen and thirty-six respectively, such sections amounting to 190,200 acres and more.

That the said territory which was not ceded by

said treaty never has been nor has any portion 19
thereof ever been an Indian reservation, nor have any of the said school lands therein situate, or any portion thereof, been settled upon by the erection of a dwelling house or the cultivation of any portion of the same, nor has any portion of the same been selected or occupied as townsites, nor has any portion thereof ever been reserved for public uses.

That by an act of Congress entitled, "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889, such proceedings were had; that 20
shortly thereafter, and prior to September 2, 1891, the Indian title to a great portion of the unceded territory hereinbefore described was duly ceded to the United States by an agreement with said Indians, and such title was entirely extinguished except as to 29½ townships therein situate, which were not included in said cession, the lands not embraced in such cession being those defined by the following boundaries:

"Commencing at the point on Thief River where the same crosses the line between Marshall and Polk counties; thence easterly to the most north- 21
westerly point of the upper Red Lake; thence easterly along the northerly shore of said upper Red Lake to a point due north of a point 1 mile east from the easterly end of the lower Red Lake; thence due south to the last named point; thence southwesterly in a straight line to a point on Hay Creek 1 mile from where said creek enters the lower Red Lake; thence south to a point from which a line extending west passes midway between what is called the 'big marsh' and the sugar

bush north of and nearest to said marsh, said sugar bush being on the Red Lake and White Earth Road; thence west along said line between said marsh and sugar bush to Clear Water River, said line being supposed to be about 6 miles south of the lower Red Lake; thence northwesterly along said Clear Water River to the point where said river crosses the boundary of Red Lake Reservation as the same has heretofore existed; thence along said reservation line to the place of beginning, as designated on a map published in 1888 by Rand, McNalley & Co., of Chicago, Ill., (but all waterways within the reservation above described are to be free for commercial purposes to all citizens of the United States), for the purpose and upon the terms stated in said act, which said lands embraced within the foregoing boundaries have been reserved by the commissioners appointed under said act and as therein authorized for the purpose of making and filing the allotments therein provided for."

That the said statute of January 14, 1889, provided for the allotment of lands in severalty to the Indians within all the territory not ceded by the treaty of October 2nd, 1863, or by said agreement of July 8, 1889, in conformity with that certain act entitled, "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States in the Territories over the Indians, and for other purposes," approved February 8, 1887.

That it was, by said act of Congress of January 14, 1889, directed that as soon as the cession and relinquishment of the Indian title had been obtained and approved, the Commissioner of the General Land Office should cause the lands so

ceded to be surveyed in the manner provided by 25
law for the survey of public lands, and that as soon as practicable after such survey had been filed and approved, the Secretary of the Interior should appoint a sufficient number of competent and experienced examiners to go upon said lands thus surveyed, and personally make examination of the same by 40 acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing shall be termed "pine lands," and which examination was required to show with particularity the amount and quality 26
of pine timber standing or growing on any tract, estimated by feet, and such examination was required to be filed with the Commissioner of the General Land Office, who was directed to make a list of all such "pine lands," describing each 40 acre lot or tract, and opposite each description to place the actual cash value of the same, according to his best judgment and information, but which valuation should not be less than three dollars per thousand feet, board measure; such list to be approved, modified, or rejected by the Secretary of 27
the Interior, as he should deem proper.

It is further provided by said act of Congress that all lands acquired from said Indians on said territory other than "pine lands" are, for the purposes of such act, to be termed "agricultural lands."

By said act of Congress it is further provided that after such surveys have been made, approved

and proclaimed, the said "pine lands" shall be sold to the highest bidder for cash at the local land office of the district within which said lands are located, in 40 acre parcels, and that in no event shall any parcel be sold for less than its appraised value, and that the residue of said lands remaining unsold after said public offering shall thereafter be sold at private sale for cash at the appraised value thereof, upon application at the local land office.

It is further provided by said act of Congress that when any of the "agricultural lands" not allotted under such act shall be surveyed, that the same shall be disposed of by the United States to actual settlers only, under the provisions of the homestead laws, provided that each settler shall pay to the United States for the lands so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five annual payments, and to be entitled to a patent therefor at the expiration of five years.

It is further provided by said act of Congress that all money accruing from the disposal of all said lands in conformity with the provisions thereof shall, after deducting certain expenses of cession, relinquishment, removal, allotments, surveys, and appraisals, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota, as a permanent fund, to draw interest at the rate of five per centum per annum, payable annually, for a period of fifty years. That by an act of Congress entitled,

"An act to amend an act entitled 'An act for the 31
relief and civilization of the Chippewa Indians in
the State of Minnesota,'" approved February 26,
1896, it is provided that sections numbered sixteen
and thirty-six of each township so surveyed shall
not be sold until the claim of the State of Minne-
sota to said sections, as part of the school lands of
said State, shall be determined. That the succes-
sive Secretaries of the Interior and Commissioners
of the General Land Office, and the above named
defendants, Secretary and Commissioner respec-
tively, commencing shortly after the passage of
said act of Congress of January 14, 1889, and pro- 32
ceeding continuously thereunder and thereafter,
caused surveys to be made of all the territory so
ceded, and also of all the territory not ceded by the
agreement of July 8, 1889, a census of the Indians
to be taken as in said act provided, surveys and es-
timates of the "pine lands" to be made, and per-
formed and did various other acts required by said
statute preliminary to the disposition of said lands
and of the pine growing thereon, and of the said
"agricultural lands," and the successive Secretar-
ies and Commissioners, and the said defendants, re-
spectively Secretary and Commissioner particular- 33
ly, did proceed to sell considerable quantities of the
pine growing thereon, in both the ceded and unced-
ed portions of said territory,and on said sections 16
and 36 and that the said defendants, Secretary and
Commissioner respectively, threaten to and intend,
and they will unless restrained by the order and de-
cree of this court, dispose of all the said sections 16

34 and 36 and all the pine timber growing thereon within the territory so ceded and also in the portion unceded in the manner and for the purpose provided by said act of Congress, to the entire denial and exclusion of any right of the State of Minnesota to any of the said sections 16 and 36, or of said timber, within said area so ceded and unceded, and to the great damage to said State.

That all of said territory, both ceded and unceded, had been fully surveyed by the United States prior to the commencement of this action.

That the quantity of "pine lands" so sold
35 amount to 117,154.23 acres, for which the United States has received $710,496.50.

That the "agricultural lands" so sold amount to 1,523.94 acres, for which the United States has received $708.70.

That, proceeding under the provisions of that certain act of Congress approved June 7, 1897, the successive Secretaries of the Interior and Commissioners of the General Land Office, and particularly the defendants, acting as such officers adopted regulations for the logging of what is called "dead and down timber"
36 on the aforesaid ceded and unceded lands, and did authorize the Indians to fell, cut, remove, sell and otherwise dispose of large quantities of the "dead and down timber" thereon, which the said Indians, and many white persons who acted under their authority, proceeded to do, and have done continuously down to the present time, cutting, removing and selling large quantities of the said timber, so-called "dead and down," from many sections numbered sixteen and thirty-six.

That instead of cutting only "dead, and down timber" so-called, the Indians and such persons cutting under the authority aforesaid have wrongfully cut, removed and sold from said territory, and particularly from said school sections sixteen and thirty-six, many millions of feet of timber which is not "dead and down" in any sense, but which is, and was when so cut and removed, green and uninjured timber; that the amount of such timber so cut and removed is over fifty-five millions of feet, and at prices ranging from four dollars and twenty-five cents to five dollars per thousand feet, and the total amount realized therefrom is about $263,000, the great portion of which timber was cut from said school sections sixteen and thirty-six. That shortly after the passage of said act of Congress of January 14, 1889, and in due time and continuously thereafter, the State of Minnesota duly notified the Secretary of the Interior and the Commissioner of the General Land Office that it claimed title to each and every section 16 and 36 within said tract of territory so ceded and unceded, and said State has ever since continued to claim and assert its said title.

That as long ago as on or about September 7, 1891, upon claim duly made as aforesaid by your oratrix to the Commissioner of the General Land Office, said officer acknowledged and held said title or right to be in the State of Minnesota as to the said sections sixteen and thirty-six within this particular territory, whether ceded or unceded, and your oratrix for a long time believed that said

ruling settled the question in favor of the State of Minnesota, and would be adhered to.

That, after a considerable time, the question was again raised by the Department of the Interior, and, after a hearing before the Secretary thereof, that officer, the above named defendant, Ethan Allen Hitchcock, did, as such Secretary on or about the day of May, 1899, in a letter addressed to the Commissioner of the General Land Office, and signed by such Secretary, wholly deny the right or claim, or any right or claim of your oratrix in or to any of the said sections 16 and 36, in any portion of said territory whether ceded or unceded. That said defendants, such Secretary and Commissioner, as such officers, propose and threaten to, and will unless restrained by the order and decree of this honorable Court, proceed to dispose of all of said sections 16 and 36 within said territory whether ceded or unceded not heretofore disposed of, by sale to many purchasers, or by allotment to the Indians, or to permit the pine to be cut and removed therefrom, and that they will thereby deprive your oratrix of the possession and enjoyment of and of the title to said lands or pine timber, and threaten and propose to create thereby a fund in the Treasury of the United States to be administered for the sole benefit of the Chippewa Indians as provided by the act of Congress of January 14, 1889.

That by virtue of the premises a cloud has been cast upon the title of your oratrix to the said lands. That a very large portion, and the greater portion, of said sections 16 and 36, but what por-

tion your oratrix is unable to state more particu- 43
larly, is covered with pine timber in quantity exceeding one hundred millions of feet, and of a value of more than five dollars per thousand feet.

That the value of said "pine lands" consists almost entirely in their timber, and that when the pine is cut therefrom the land is of little value for agricultural or any other purposes.

That prior to the commencement of this action
Letters respectively as such Secretary & Commissioner
the above named defendants and their predecessors, Secretaries of the Interior and Commissioners of the General Land Office respectively, have, under the said act of Congress of January 14, 1889, 44
disposed of, and sold, a large quantity of lands comprised within said sections 16 and 36, or have permitted the timber to be cut therefrom but to what extent and in what quantity your oratrix is not informed and cannot state, and that the purchasers and those claiming under them have already cut all the pine from a great portion thereof, and threaten to so cut and remove the pine from the remainder of said tracts, and to commit other acts of waste on said lands, and that your oratrix, by the cutting of the pine which has already, as aforesaid, taken place, has been damaged in the 45
sum of more than five hundred thousand dollars, and will be greatly damaged hereafter by the aforesaid intended acts of waste.

That the said purchasers and those claiming under them (for many of the said purchasers have also disposed of large portions of the land so bought by them) are many in number, many of

46 them being non-residents of the State of Minnesota, and the names and places of residence of most of them are unknown to your oratrix, and cannot with any diligence be ascertained.

That the said defendants and their predecessors in office, such Secretaries and Commissioners respectively, acting as such officers, have also allotted to said Indians, and sold and the defendants intend and threaten to so allot and sell to many purchasers, many tracts of the school lands classified as "agricultural lands" in the act of Congress of January 14, 1899, but in what amounts and to what purchasers your
47 oratrix is not able to state; that many of said purchasers are non-residents of the State of Minnesota, whose names and places of residence cannot with any diligence be ascertained.

That, by virtue of the premises, your oratrix will be put to a great multiplicity of suits, irreparable damage and great expense, unless aided by the equitable jurisdiction and powers of this honorable Court, and that the aforesaid property, particularly the "pine lands" will be wasted by cutting of all the pine thereon and rendered valueless unless prevented by the order and decree of this
48 honorable Court.

That by the aforesaid acts of Congress and other acts *in pari materia* the said Chippewa Indians have been made and have become citizens and electors of the State of Minnesota, and that they and their children are entitled to participate in the school fund of such State.

That the permanent school fund of said State,

on the 11th day of July, 1898, was $11,822,145.58, 49
and is now greater than that sum.

That the same is invested in various interest bearing securities and the amount produced by such interest is distributed annually among the school districts of the State of Minnesota; that the amount so distributed in the year 1897 was $772,947.50 and that such amount increases every year.

That the unsold school lands of said State amount of 1,327,434 acres.

That the average value of sections 16 and 36 in the territory ceded as hereinbefore stated is more 50
than fifty dollars per acre.

That your oratrix has no adequate remedy by any action at law in the premises.

To the end, therefore, that the defendants, Ethan Allen Hitchcock, Secretary of the Interior, and Binger Hermann, Commissioner of the General Land Office, may, if they can, show cause why your oratrix should not have the relief herein prayed for, and that they may be compelled to answer all and singular the premises, and all matters and things herein stated as fully and particularly as if the same were here again repeated, 51
and they severally thereunto interrogated, and that the said defendants may answer without oath, their answer on oath being hereby expressly waived;

And that the said defendants may by the decree of this court be perpetually enjoined and restrained from selling or otherwise disposing of any

of the said sections 16 and 36 within said territory, or of any timber thereon and may also by such decree be required to admit and acknowledge the title of the State of Minnesota to such sections 16 and 36, and may also, pending this suit, be enjoined from selling or otherwise disposing or allotting of any such sections or of any timber thereon, and may, by the final decree of this court, be perpetually enjoined from selling or disposing of any of the same, that the title to said sections 16 and 36 may be quieted and decreed to be in your oratrix; that the defendants and each of them may be enjoined by the order of this honorable Court pending this suit from disposing of or alloting any of said lands or of any timber thereon, and that your oratrix may have such other or further relief as the nature of this case may require and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your oratrix the most gracious writ of subpoena, to be issued out of and under the seal of the said Court, to be directed to the said defendants, Ethan Allen Hitchcock, Secretary of the Interior, and Binger Hermann, Commissioner of the General Land Office, strictly commanding them, and each and every of them, under a certain penalty and on a certain day therein to be named, to be and appear

before said court, and to stand and abide by such order and decree as said court may make in the premises; and your oratrix will always pray, etc.

C. D. Davis
F. B. Kellogg
C. A. Severance
H. W. Childs
J. E. Byrnes
Counsel

W. B. Douglas
Attorney General of the
State of Minnesota.

Solicitors and of Counsel for the Complainant.

UNITED STATES OF AMERICA,

State of Minnesota,
District of Minnesota.

C. W. G. Nidden being duly sworn, on his oath says he has resided in St. Paul County of Ramsey in the State of Minnesota, for eleven years; that he is well acquainted with the facts and circumstances set forth in the

58 foregoing bill of complaint, and that he has read the same and knows the contents thereof, and that the same is true of his own knowledge. C. W. G. Wilder

Subscribed and sworn to before me this

day of August, 1899.

P. J. Healy
Notary Public
Ramsey County, Minn.

Seal